HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

HON'BLE SRI JUSTICE D. APPA RAO

W.A. NO. 1568 of 2004 and C.C. No. 643 of 2005

Dated: 13.04.2006

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W.A. No. 1568 of 2004

Between:

K.Aananthaiah s/o K. Kiriti Rao, 39 yrs, occ: Post Graduate Teacher A.P. Tribal Welfare Residential Educational Institutions (APTWREI) Society, Yerragondapalem, Prakasam District.

…Appellant

And

A.P. Tribal Welfare Residential Educational Institutions (APTWREI) Society (Gurukulam) rep., by its Member Secretary, Telugu Samkshema Bhavan, Masab Tank, Hyderabad

and 3 others.

…Respondents

C.C. No. 643 of 2005

Between:

K.Ananthaiah s/o K. Kiriti Rao, age 39 yrs,

..Petitioner

And

Sri Manmohan Singh, IAS, Member Secretary,

A.P. Tribal Welfare Residential Educational Institutions

(APTWREI) Society (Gurukulam) represented by its Member Secretary, Telugu Samkshema Bhavan, Masab Tank, Hyderabad.

..Respondent

HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

HON'BLE SRI JUSTICE D. APPA RAO

W.A. NO. 1568 of 2004 and C.C. No. 643 of 2005

COMMON JUDGMENT (per Hon'ble Sri Justice D. Appa Rao)

W.A. No. 1568 of 2004

The unsuccessful writ-petitioner preferred this appeal against the orders of the learned Single Judge dismissing the Writ Petition No. 12549 of 2004 wherein

the writ petitioner questioned his orders of transfer to another institution.

The facts necessary for disposal of the writ appeal are as follows:-

The appellant is a qualified Post Graduate Teacher in Sanskrit and he was initially appointed as a trained graduate teacher in Sanskrit in the A.P. Residential Educational Institutions (APREI) Society, respondent No.4 herein. He was selected in direct recruitment as Post-graduate Teacher in 1996. 4th respondent society was bifurcated through G.O.Ms. No. 51, dated 8-6-1998, and respondent No.1-society (now called as Gurukulam) was established to impart education in tribal areas. The employees were asked to give their options through the proceedings dated 24.5.1999. The appellant along with others questioned the said proceedings. The High Court by its order dated 2.2.2000 directed the appellant to give option within two months as per the Draft Rules by canceling the earlier option and accordingly he gave his option to work with first respondent-society. The Member Secretary accepted his option and absorbed him in the cadre of Post Graduate Teacher in 1st respondent-society with effect from 23.4.2001. A seniority list was also prepared wherein his name was shown at Sl.No. 169 and in the final seniority list dated 6.5.2002 his name was figured at Sl.No.173.

Since the triabls did not opt for Sanskrit as one of the subjects, the said subject was abolished in the schools of first respondent. However, he was asked to continue in the services of the first respondent to teach Telugu vide proceedings, dated 27.06.2003. All of a sudden, the 2nd respondent had taken a decision to repatriate the appellant to the 4th respondent society in view of the abolition of the Sanskrit as one of the subjects. Thereupon, he submitted an application to second respondent to consider his request to retain him with first respondent-society. However, it was rejected by proceedings dated 10.07.2004. Thereupon, he filed a writ petition No. 12549 of 2004 for a declaration that the proceedings dated 10.07.2004 as arbitrary, illegal, unconstitutional and contrary to Rule 9 (4) of APTWREI Society Recruitment Rules, 1999 and consequential direction to the respondents to continue him with first respondent-society.

The learned Judge, after considering the fact that Sanskrit has no longer the subject to the students in the schools of the 4th respondent-society and that there was every justification to repatriate the appellant to 4th respondent-society, where

'Sanskrit' is being taught, his request to continue with 1st respondent was without any justification, and that he did not find any illegality in the order of repatriating the appellant to the 4th respondent-society, and accordingly the writ petition was dismissed.

Aggrieved by the said order, the appellate filed this appeal contending that the learned Single Judge did not consider Rule 9 (iv) of Andhra Pradesh Tribal Welfare Residential Educational Institutions Society (Recruitment) Rules, 1999, which contemplates that once the individual exercised the option and accepted by the Secretary, the same is final and he cannot be repatriated. Since he was permanently absorbed in the first respondent society, the first respondent has no power to repatriate to 4th respondent society, where he was not having any lien. In fact all the teachers who were appointed to teach Sanskrit were asked to teach Telugu. Right from 2001 he has been teaching Telugu to the higher classes in High School section and he being taught Telugu methodology in B.Ed. and also possesses B.A. O.L. degree, his request ought to have been considered to work as a teacher in Telugu. When this procedure has been adopted in a number of subjects, he ought to have been allowed the very same methodology. He prayed that his repatriation to 4th respondent society be declared as null and void.

It is an admitted fact that the appellant has been working as teacher in Sanskrit/Telugu right from 1992. He was initially appointed by the 4th respondent society in 1992 and later as a teacher in 1996 as a direct recruitee.

The A.P. Residential Educational Institutions-4th respondent was bifurcated by virtue of G.O.Ms. No. 51, dated 8.6.1998, into A.P. Residential Educational Institutions (APREI) Society-4th respondent and A.P. Tribal Welfare Residential Educational Institutions (APTWREI) Society-1st respondent, popularly known as Gurukulam. The first respondent society was formed by the Government to establish and maintain the residential educational institutions in Tribal areas. It seems 52 Tribal Residential Educational Institutions, which were under the control of 4th respondent have been transferred to first respondent-society with effect from 1-6-1999.

When the first respondent society was established, options were called for from the employees requesting the employees to opt either the services of first

respondent or 4th respondent. The appellant along with others challenged these proceedings and the High Court directed him and others to give options within two months as per the Draft Rules. Accordingly, the appellant gave his option to work with 1st respondent and the same was accepted by the Member Secretary of 4th respondent and absorbed him in first respondent society. It is also not in dispute that by virtue of his option he was absorbed in the cadre of Post Graduate Teacher in the first respondent-society with effect from 23.4.2001. The fact that in the provisional seniority list of P.G. Teachers working in Tribal society prepared on 21.2.2002 the name of the appellant was figured at Sl.No. 169, and in final seniority list prepared on 6.5.2002 his name was figured at Sl.No. 173, is also not in dispute. While things stood thus, the Member Secretary issued proceedings dated 16.3.2004 unilaterally allotting him from 1st respondent to 4th respondent society.

Aggrieved by the said proceedings, he filed earlier W.P. No. 5996 of 2004 questioning the said allotment by way of transfer. The High Court set aside the proceedings by its order dated 16.4.2004 directed the Member Secretary to consider the representation made by the appellant. However, without considering his representation, the impugned proceedings dated 10.7.2004 were passed allotting into the services of 4th respondent solely on the ground that since there was no Sanskrit subject in the Gurukulam.

The appellant's main thrust was the said allotment was contrary to Rule 9 (iv) of the A.P. Tribal Welfare Residential Educational Institutions Society (Recruitment) Rules, 1999, (for short "Rules"). In fact there was early minutes of the report wherein all the Sanskrit teachers were designated as Post Graduate Teachers in Telugu/Sanskrit.

Before considering the question raised by the appellant, it is useful to reiterate that after bifurcation the first respondent was registered as a society under the Public Societies Registration Act, managed by Board of Governors. The memorandum of the association and the Model Bye-laws, Conduct Rules, Discipline & Appeal Rules & Leave Rules are laid down in Annexure-1 and II to G.O.Ms.No. 52, Social Welfare (TW Edn-1) Department, dated 03.06.1998. The appellant was originally working with 4th respondent-society. When these societies were bifurcated, options were called for. The appellant was opted to work with first respondent society. The same was accepted. At this juncture, it is useful to consider

Rule-9 of the Rules which reads as follows;-

Rule-9 " Absorption in A.P.T.W.R.E.I.S.

i. Every teaching and non-teaching employee belonging to APREIS who stand transferred to the APTWREI Society on the date of issue of these rules

Shall be given an opportunity to opt to the service of the Society or for repatriation to the Service of the Govt. or APREIS.

ii. Such option shall be exercised and furnished to the Secretary within such period of time as may be prescribed by the Secretary with the approval of the Chairman.

iii. The Procedure for consideration and acceptance of options and conditions of acceptance including rejection of options, shall be prescribed by the Secretary with the approval of the Chairman.

iv. The option once exercised and accepted by the Secretary shall be final.

v. The number of persons to be absorbed in the society under each category shall not exceed the sanctioned strength under each such category." (emphasis mine)

From a reading of the above, it is beyond doubt that the option that was exercised by the appellant has become final

We may also mention herein that even before bifurcation, the 4th respondent, the original society after appointing Sanskrit Teachers, felt that the tribals were not showing any enthusiasm to learn Sanskrit. It was also found that in the non-upgraded schools there was one post of PGT and two posts of TGTs (Telugu & Sanskrit). The post of PGT Telugu was upgraded into JL (Tel) in the upgraded schools. Therefore, there was no post of PGT in the upgraded schools but only TGT posts i.e. Telugu and Sanskrit existed. At the request of the Service Associations, Board of Governors by the Standing Order dated 23.12.1998 restored the post of PGT (Telugu). The relevant standing order is excerpted as under.

"Further, a combined seniority list of TGT (Tel) & TGT (Skt) was prepared and published for effecting promotions as PGT. The TGTs (Tel) & (Skt) who possess Post Graduate degree in Telugu are being considered for promotion as PGT (Tel). But the TGTs (Skt) who are possessing the qualification of Post Graduation degree in Sanskrit are not considered for promotion as PGT as there is only PGT (Tel/Skt to facilitate the promotions of TGTs (Skt) as PGT (Skt). This will not disturb the actual staffing pattern of the

institutions.

The request of the Service Associations was placed in the XXX Board of Governors meeting held on 14.12.1998 under agenda item No. 19 (A) and it was resolved to accept the proposal with a condition that the Sanskrit teachers promoted as PGT (Sanskrit) should teach Telugu subject also for the classes allotted to them."

Contrarily, the Board had taken a decision to relieve all the Sanskrit teachers and allot them to the 4th respondent society by impugned proceedings. The representation to the society was considered and held,

"After examining the explanation, the request of the individual to continue in Gurukulam is hereby rejected, as it is a policy decision of the Board to send all Sanskrit Teachers to APREI since there is no Sanskrit subject in Gurukulam Schools."

The order is cryptic and except using cliché ridden expressions, policy decision etc. it is not evident as to why he was sent to Gurukulam school - when admittedly the post is available in said schools.

The appellant now challenges this on the ground that he was already appointed to the first respondent society and he cannot be transferred to the 4th respondent society, his option exercised under Rule 9 (iv) has become final. Unfortunately, in spite of direction by the High Court in W.P. No. 5996 of 2004, the Member Secretary of first respondent society did not consider any of the questions raised by the appellant. He did not consider as to what would happen to his seniority and other service conditions if he were to be transferred to 4th respondent society.

It is almost settled proposition of law that the requirement of recording reasons can be regarded as one of the principles of natural justice which govern exercise of power even by administrative authorities. The Constitution Bench of the Supreme Court in ***S.N. Mukherjee v. Union of India*** laid down the following proposition.

> "…Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon

> the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement."

The same was reiterated in ***State of Punjab v. Bagh Singh*** the Supreme Court observed that,

"Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

Despite the fact that earlier this Court directed the Member Secretary to consider the objections. Unfortunately he did not do so. Consequently, the impugned order is liable to be struck down.

We have earlier pointed out that designation of Sanskrit teachers were already changed to Teachers in Telugu/Sanskrit. It is not the case of the respondents that Telugu subject is not being taught in different schools. He could as well be considered for the said post. When Rule-9 contemplates finality of the option at no stretch of imagination the first respondent could repatriate to the 4th respondent society without considering his representation in the light of the request made by him to continue in the first respondent society. Since the impugned order was contrary to the Rule-9 of the Rules, it must be held that the orders did not sustain and necessarily it had to be quashed. The impact of transfer was not known and it is for

the appropriate authority to consider all these questions and then take a decision. It is not for this Court to direct the first respondent to eternally take the appellant in its society as a teacher.

C.C. No. 643 of 2005

This contempt case is filed by the petitioner to punish the respondent for willful and deliberate disobedience of the orders passed by this Court in W.A.M.P. No. 2877 of 2004 in W.A. No. 1568 of 2004, dated 2.12.2004 under Sections 10 to 12 of the Contempt of Courts Act.

Since fresh orders are directed to be passed, this C.C. is closed.

In the result, the writ appeal is allowed setting aside the order of the learned Single Judge in W.P. No. 12549 of 2004. Consequently the impugned proceedings are held to be illegal and the authorities concern shall take necessary decision as per the observations made above. No costs.

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B. PRAKASH RAO,J

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D. APPA RAO,J

Dated:

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